

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24768-2025 (O&M)

Date of Decision: 08.05.2025

Chetan Kumar

... Petitioner

VS.

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Akshay Kumar Dahiya, Advocate for
Mr. Pawan Kumar Hooda, Advocate for
for the petitioner

Mr. Chetan Sharma, DAG Haryana

Sandeep Moudgil, J. (Oral)

(1). This petition under Section 528 BNSS has been filed by the petitioner with a prayer to quash the FIR No.305 dated 27.09.2024 (Annexure P1) under Sections 61(1)(a) of Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020) registered at Police Station Manesar, District Gurugram along with all consequential proceedings arising therefrom.

(2). Learned counsel for the petitioner submits that as per the prosecution case, the petitioner was found driving a Honda City car wherefrom the police is said to have seized a crate containing 12 bottles of Kingfisher beer, without permit/licence. It is argued that FIR is frivolous for the reason that the petitioner along with two other friends had purchased the said beer carton from Ms/ Discovery Liquor House for an amount of Rs.1700/- and the bill to that effect is appended as Annexure P2.

(3). It is urged that the rigours of Section 61 of the Punjab Excise Act, 1914 can be imposed only on establishment of mens rea or criminal intent on the part of the person apprehended without any licence or permit or

bill to hold or carry such liquor items. He then exhorted that the carton of beer was purchased by the petitioner to celebrate birthday party at his hometown and not for its illegal or unlawful transport or sale.

(4). Notice of motion. Mr. Chetan Sharma, DAG Haryana accepts notice. He submits that the police on interception of the car owned and driven by the petitioner was found in possession of 12 bottles of beer. He, however, could not contradict the stand of the petitioner and submitted that the bills were there but the same could not be verified to be genuine by the police and thus finding it to be a bogus bill, the police registered the FIR and filed chargesheet. He also relied upon the confessional statement dated 27.09.2024 (which is part of the challan at page 42 of the paperbook) made by the petitioner wherein he admitted the fact that he used to deal in sale and purchase of liquor/beer from the liquor shop.

(5). Heard learned counsel for the parties.

(6). It is settled proposition of criminal jurisprudence that criminal proceedings cannot be allowed to become instrument of harassment and in cases where the action of the prosecution suffers from frivolity and malicious intentment, the courts are empowered under Section 528 of BNSS to quash such proceedings *ab initio*.

(7). Apparently, in cases involving import, export, possession of liquor without lawful permit, as per Section 48 of the Punjab Excise Act, it is only the magistrate who can take cognizance of an offence under section 61 of the Act on a report of a police officer vested with the powers of an Excise Officer under this Act. Thereafter, the Magistrate can issue warrant under

clause (a) only when he has reason to believe that an offence under Section 61 or 63 has been is being or is likely to be committed and he can issue warrant under clause (b) of this Section only for the arrest of any person whom he has reason to believe to have been, to be or to be likely to be engaged in the commission of any offence under Section 61 or Section 63 of the Act.

(8). In the present case, admittedly there is a clear and egregious breach of Section 48 of the Act, without any plausible justification for such non-compliance. The statutory requirement mandates that the Magistrate record reasons for authorizing a search, which is a crucial step in ensuring the legitimacy of the search process. The failure to adhere to this requirement by the police, undermines the procedural safeguards embedded in the Act, thereby rendering the search potentially unlawful. The purpose of recording and forwarding reasons to the Magistrate is to prevent police officers from conducting arbitrary and illegal searches.

(9). Most importantly, it is not a disputed fact that at the time of apprehending the petitioner and search and seizure of beer bottles from the possession of the petitioner in his car, the petitioner had produced a bill/invoice No.1322 dated 27.09.2024 issued by M/s Discovery Liquor House. In such circumstances, the prime ingredient as contained in Section 61(1)(a) of the Punjab Excise Act prescribing penalty for unlawful import, export, transport, manufacture and possession becomes redundant in view of the fact that in the challan presented against the petitioner, there is no mention of any evidence which establishes the fact that the liquor/beer bottles being carried by the petitioner 'unlawfully' and the same was being used for

export/import etc. The reliance placed by the learned State counsel on the confessional statement has no significance being recorded in police custody.

(10). In view of the above discussion, this petition is allowed and FIR No.305 dated 27.09.2024 (Annexure P1) under Sections 61(1)(a) of Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020) registered at Police Station Manesar, District Gurugram along with all consequential proceedings arising therefrom are hereby quashed.

(11). Ordered accordingly.

08.05.2025

V.Vishal

1. *Whether speaking/reasoned?*

2. *Whether reportable?*

(Sandeep Moudgil)

Judge

Yes/No

Yes/No